

Editor's note: Reconsideration denied by Order dated July 21, 1987

FREDRIC ALAN MAXWELL

IBLA 85-401

Decided January 27, 1987

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying a protest of the policy of issuing refunds to the remitter in the case of withdrawn or rejected noncompetitive oil and gas lease offers.

Reversed.

1. Accounts: Refunds -- Oil and Gas Leases: Offers to Lease -- Oil and Gas Leases: Rentals -- Payments: Refunds

Refunds of advance rental payments tendered in connection with noncompetitive over-the-counter oil and gas lease offers which are rejected or withdrawn prior to lease issuance are properly issued to the offeror(s), the real party(ies) in interest, pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1982).

APPEARANCES: Fredric Alan Maxwell, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Fredric Alan Maxwell has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), confirming the policy of the Eastern States Office to issue refund checks "to the remitter" in the case of withdrawn or rejected noncompetitive oil and gas lease offers. The decision also confirmed this policy had been followed when processing refunds for offers ES-32144 through ES-32149.

On December 22, 1982, appellant and A. W. Rutter, Jr., jointly filed six noncompetitive oil and gas lease offers for a total of 46,827.24 acres of public domain and acquired land situated in Baxter and Newton Counties, Arkansas, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982), and section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). ^{1/} The record indicates that BLM received the filing fees and first year's advance rental

^{1/} The lease offers indicate that appellant and Rutter had agreed to hold, respectively, a 10-percent and a 90-percent interest in the offers and any leases issued pursuant thereto.

payments with the lease offers. By letter received September 13, 1983, appellant informed BLM that "[a]ny refund check [with respect to the lease offers] should be made payable to both partners and sent to one of us when issued."

By decision dated June 7, 1984, BLM rejected lease offer ES-32144 because the "mineral rights in the requested lands are not Federally owned." On August 3, 1984, letters signed by appellant and Rutter withdrawing the remaining lease offers in their entirety and requesting refunds were filed with BLM. 2/ The record indicates that refunds were issued in August 1984, with respect to all of the first year's advance rental payments.

On November 5, 1984, appellant protested the Eastern States BLM policy of refunding advance rental payments for withdrawn or rejected lease offers to the remitter rather than the offerors filing the offers. In particular, appellant cited the rental refund checks issued for ES-32144 through ES-32149 made payable only to the remitter -- A. W. Rutter, Jr. -- rather than to both offerors. Appellant also asserted error in the amount of the refund check for ES-32145 and requested that the "refund check for ES-32145 be issued to reflect this change." 3/ By letter dated December 24, 1984, BLM responded to appellant's letter:

It is the policy of the Eastern States Office to issue refund checks to the remitter. In the case of ES 32144 through ES 32149, the files show that Mr. Rutter submitted the advance rentals and filing fees and therefore was entitled to full refunds.

Appellant has appealed from this decision.

In his statement of reasons for appeal, appellant contends the policy of the Eastern States Office "negates" his interest in the lease offers and is contrary to BLM policy and Departmental regulations.

2/ The record reveals that in a July 25, 1984, telephone conversation, Rutter indicated he wished to withdraw the lease offers and a BLM employee explained that a withdrawal letter must have both offerors' signatures. We note each letter was for the most part typewritten, with corrections in blue ink. As originally typewritten, the letters state: "I hereby withdraw my oil and gas lease offer * * *. Please accept this letter also as my request to you to issue to me a refund check * * *. In addition, there is a line for the "Offeror's Signature" and the signature of Rutter appears on that line. The letter has been corrected in blue ink to refer to the plural, rather than the singular, and appellant's signature appears in the same blue ink on a separate line.

3/ An objection to an action proposed to be taken in any proceeding before BLM is properly deemed a protest. 43 CFR 4.450-2. Although the protest was not timely as to those rental refunds already executed, it appears appellant has other joint offers and/or leases pending which may be affected by this policy and, hence, BLM properly treated this as a protest of the policy. Appellant filed a timely appeal of the denial of his protest and has apparent standing.

[1] Although we find no regulation expressly dealing with the issue, it is well established that BLM may grant a refund of the first year's advance rental payment submitted in connection with a noncompetitive oil and gas lease offer when the offer has been withdrawn prior to issuance of a lease or the offer has been rejected because the land is not available for leasing. See Marie W. Suto, 73 IBLA 61 (1983); Wilfred Plomis, 51 IBLA 125 (1980); cf. Romola A. Jarett, 63 IBLA 228, 89 I.D. 207 (1982) (refund for lands erroneously leased and later cancelled). Most of the Board precedents regarding refunds arise in the context of the cancellation of previously issued oil and gas leases and deal with the question of whether a refund is proper, rather than the issue of to whom it is paid. Thus, in Arden R. Grover, 73 IBLA 308, 310 (1983), we concluded that, where a lease was subject to cancellation, the joint lessees were entitled to a refund of the first year's advance rental payment "made by them." However, the question of whether the refund check should be made payable to both lessees when only one lessee had tendered the payment was obviously not addressed in Grover, and we know of no case which has directly addressed the question.

The current statutory authority for granting refunds of first year advance rental payments for noncompetitive oil and gas lease offers is found at section 304(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1734(c) (1982), which provides:

In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

The verb "refund" is stated to mean: "To repay or restore; to return money in restitution or repayment." Black's Law Dictionary 1446 (4th Ed. 1968). This Department has recognized in the past that oil and gas leases may be jointly owned by more than one party. See Turner C. Smith, Jr., 55 IBLA 1, 89 I.D. 386 (1982); Edward Lee, 51 I.D. 299 (1925). Although the statute authorizes refunds, it provides no explicit guidance on the issue of to whom the refund is to be made as between the remitter and the real party or parties in interest where these are not the same. Payments made by a party on behalf of another are properly assumed to be for the benefit of the one on whose behalf they are made. Thus, a payment made by a third party on behalf of an offeror is assumed to be for the benefit of the real party in interest -- the offeror. 4/ See Brian D. Haas, 66 IBLA 353 (1982). In the Haas case the Board applied a regulation requiring the advance rental be paid by the offeror, and found a check in payment tendered by the offeror's father was

4/ Recognizing a right of the remitter to a refund would not only be contrary to the intent of the parties, but would suggest an interest in the offer held by the remitter. A remitter not disclosed as a party in interest would invalidate the offer. See 43 CFR 3102.5; 3112.2-3.

not properly held to be payment by one other than the offeror and thus rejection of the offer was not required. Further, we find recognition of the offeror(s) as the real party(ies) in interest is consistent with the provision of BLM Manual, section 1374.12, providing, "Refunds of excess payments * * * are made to the record title holder of a lease." Although we recognize the distinction between an issued lease and an unaccepted offer, we find the distinction immaterial in terms of defining the real party in interest entitled to a refund.

Accordingly, we hold that in the case of refunds of first year advance rental payments for noncompetitive over-the-counter oil and gas lease offers which never ripen into leases because the offers are withdrawn or rejected before acceptance, refunds pursuant to section 304(c) of FLPMA are properly made to the offeror or offerors.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge

